



The Comptroller General
of the United States

Washington, D.C. 20548

Gilkey - PL

Decision

Matter of: Norfolk Dredging Company

File: B-229572.2

Date: January 22, 1988

DIGEST

Protester's allegation that bid which failed to include information about work to be performed by bidder's organization, as required by the invitation for bids, was nonresponsive is without merit, since the information relates to responsibility and therefore may be furnished any time before award of the contract.

DECISION

Norfolk Dredging Company protests the proposed award of a contract to Great Lakes Dredge & Dock Company under invitation for bids (IFB) No. DACW65-87-B-0024, issued by the U.S. Army Corps of Engineers (Army), Norfolk District.

We deny the protest.

The IFB sought bids for dredging the channel to Newport News and the Norfolk Harbor Entrance Reach. Special Clause 25 of the IFB specified the percentage of work the contractor must perform with its own organization. Specifically, the clause provided that:

"The Contractor shall perform on the site, and with its own organization, work equivalent to at least forty (40) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government."

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Paragraph 2 of the IFB's "Additional Terms and Conditions," and paragraph 4 of the "Notice to Bidders," required each bidder to submit with its bid a description of the work it would perform with its own organization. Paragraph 2 cautioned:

"Bidders attention is invited to Special Clause 'PERFORMANCE OF WORK BY CONTRACTOR.' Each bidder shall submit with his bid a description of the work which he will perform with his own organization, the percentage of the total work this represents, and the estimated cost thereof."

Of the three bids submitted in response to the IFB, Great Lakes' was the apparent low and Norfolk's was second low. Great Lakes did not include information about the percentage of work to be performed by its organization with its bid, but stated in a post-bid opening letter that it would perform 99.9 percent of the work with its own organization. Norfolk protested to the Army that Great Lakes' bid was nonresponsive because it did not include the work description required by the IFB at bid opening. The Army denied Norfolk's protest, and Norfolk protested to our Office.

Norfolk contends that Great Lakes' bid was nonresponsive because Great Lakes did not provide with its bid a description of the work it would perform with its own organization, the percentage of the total work this represents, and the estimated cost, as required by the IFB. Norfolk argues that Great Lakes should not be allowed to "cure" its defective bid by furnishing the information required by the IFB after bid opening.

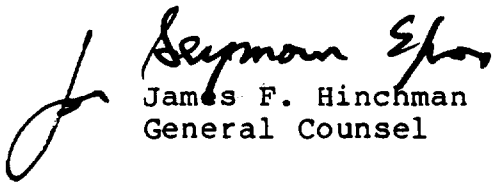
The Army reports that Great Lakes' bid did not contain any exception or modification of the performance of work requirement. According to the Army, the compliance with the performance of work provision relates to bidder responsibility, not responsiveness. Because the provision relates to bidder responsibility, argues the Army, Great Lakes should be permitted to furnish the requested work description after bid opening.

We agree. We have previously held that solicitation provisions similar to Special Clause 25, which requires a contractor to perform a certain percentage of work with its own forces, are contract performance requirements which state how the work is to be accomplished. Therefore, compliance with such provisions relates to bidder responsibility, not responsiveness. See C. Iber & Sons, Inc., B-208365.2, Apr. 20, 1983, 83-1 CPD ¶ 424; Delta Elevator Service Corp., B-208252, Mar. 23, 1983, 83-1 CPD ¶ 299. Although the Iber case differs from the present case in that

the clause in Iber specifically permitted submission of the information either with the bid or within 5 days after bid opening, we do not think the latter provision was essential to our holding in Iber. This is so because the issue involved in both cases relates to responsibility and, therefore, even without that provision, submission of the information after bid opening is proper. Since the information requested by paragraph 2 of the IFB's "Additional Terms and Conditions" is intended for use in determining the bidder's responsibility, Great Lakes could provide it any time prior to award. See BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309. Norfolk's reliance on Griffin Construction Co., B-185474, Nov. 29, 1976, 76-2 CPD ¶ 452, is misplaced because that bid form also contained a subcontractor listing requirements designed to prevent bid shopping.

Norfolk argues that the IFB's mandatory language, requiring each bidder to submit with its bid information about contract performance, raises a presumption that the required information must be included for the bid to be responsive. However, a requirement which relates to responsibility cannot be converted into a matter of responsiveness merely by the terms of the solicitation. See All Clean, Inc., B-228608, Aug. 12, 1987, 87-2 CPD ¶ 154. Therefore, even though the IFB required submission of a description of work performance with the bid, since information bearing on bidder responsibility may be provided any time prior to award, Great Lakes' failure to submit the required information with its bid had no bearing on the responsiveness of the bid. Rather, Great Lakes was required only to submit the requested work description before the award was made.

The protest is denied.


James F. Hinchman
General Counsel